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Attorneys for Defendants
DIGITAL REALTY TRUST, INC. and ELLEN JACOBS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAUL SOMERS, an individual,

Plaintiff,

v.

DIGITAL REALTY TRUST, INC., a Maryland
corporation; ELLEN JACOBS, an individual, and
DOES ONE through TEN, inclusive,

Defendants.

Case No. 3:14-cv-05180 EMC

**DEFENDANTS' OBJECTION AND
MOTION TO STRIKE DKT. NO. 301,
LATE-FILED EXHIBIT TO PLAINTIFF'S
MOTION FOR RECUSAL**

Defendants DIGITAL REALTY TRUST, INC. and ELLEN JACOBS object to the late-filed Exhibit A [Dkt. No. 301], submitted by Plaintiff Paul Somers today in support of his Motion Requesting Recusal, as follows:

OBJECTIONS TO DOCKET NO. 301:

1. Dkt. No. 301, "Supplement Paul Somers Declaration," Exhibit A (pp. 2-3)

Objection: Inadmissible Hearsay. Lacks foundation. Best Evidence Rule. *See* Fed. R. Evid. 802, 901, 1002. The document is not authenticated. Defendants respectfully request the Court to sustain the above objections.

MOTION TO STRIKE DOCKET NO. 301:

The document filed as Docket No. 301 was apparently filed in support of a pending motion for recusal. It not timely filed.

Plaintiff's Motion Requesting Recusal was filed on March 20, 2018. [Dkt. No. 288.] Defendants timely opposed Plaintiff's motion on April 3, 2018, noting the absence of an Exhibit A to Plaintiff's Declaration filed in support of his motion. [Dkt. Nos. 292-294.] Ten days after the Opposition was filed, on April 13, 2018, Somers filed Docket No. 301, a document bearing a cover page saying, "Exhibit A." There was no explanation accompanying this filing and no excuse provided for attempting to assert new evidence into the record after the briefing on this motion has been completed.

Defendants have been prejudiced. They did not have the benefit of Plaintiff's exhibit prior to filing their Opposition. Plaintiff's Exhibit has not been authenticated, contains unexplained redactions, and may purport to provide evidence to support Plaintiff's motion (without any explanation from Mr. Somers, this is an assumption only).

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1 Defendants move to strike Plaintiff's untimely and prejudicial entry at Docket No. 301. If the
2 Court denies this motion, then Defendants request that the Court allow Defendants to respond to this
3 filing substantively on April 17, 2018.

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5 DATED: April 13, 2018

Respectfully submitted,
SEYFARTH SHAW LLP

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8 By: /s/ Brian T. Ashe

Brian T. Ashe
Kyle A. Petersen (admitted *pro hac vice*)
Shireen Yvette Wetmore

10 Attorneys for Defendants
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and ELLEN JACOBS
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